THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25372 OF 2005

DATED:23.12.2005

Between:

Khaja Jaleeluddin

…Petitioner

And

The District Collector, Nizamabad

Nizamabad District and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25372 OF 2005

ORDER:

The petitioner is a resident of Bodhan and he statedly duly appointed Khaja Mohiuddin. He filed the instant Writ Petition seeking a Writ of Mandamus declaring the action of the respondents in including the land in S.No.79 admeasuring Ac.3.20 gts. of Pandu Tarfa of Bodhan in Nizamabad District, as Qazzath inam lands in A.P. Gazette dt.3.10.2002, as illegal and arbitrary to Muntakab Wakf in File No.4/2/1973/Ind-(T) relating to service inam lands under Qhazzath Bodhan. He also seeks a declaration that the proceedings of the second respondent dt.9.11.2005 are illegal and arbitrary.

The case of the petitioner in brief is as follows. The brother of the petitioner was

Khaja and the land in S.No.79 admeasuring Ac.3.20 gts (hereafter called, subject property) stood in the name of his brother as service inam and madad mash. Under document dt.2.6.1965 the land vested in the petitioner by reason of which he is allegedly in possession without interruption. After death of his brother on 7.10.1996 he succeeded to the property without any encumbrances and enjoying the service inam. It is the case of the petitioner that he submitted an application to the respondent on 7.1.2005 for mutating lands in his name but the fourth respondent informed the petitioner by letter dt.28.2.2005 that the subject land is taken over into custody and handed over to Inspector of Wakfs under panchanama dt.26.5.2005. The petitioner submitted explanation to the first respondent who enquired into the matter and by letter dt.9.11.2005 informed that the subject land is notified as wakf vide notification in A.P.Gazette No.40-A, dt.3.10.2002 at Sl.No.22909. The first respondent further directed the Revenue Divisional Officer to issue Occupancy Rights Certificate (ORC) in the name of "Qazzath Service Bodhan".

The learned counsel for the petitioner vehemently contends that the land which was included in the Wakf Qazzath Bodhan is land in S.No.29 and subject land being situated under S.No.79, the same cannot be included and cannot be construed as included as wakf property. Secondly, he would urge that even according to the Wakf Board, as the survey was conducted in 1963 issuing notification under Section 4(3) of the Wakf Act, 1954 after lapse of about forty years on 3.10.2002, is illegal and arbitrary. The learned counsel, however, does not dispute that any order passed under the Wakf Act or the Rules made thereunder, the petitioner is entitled to make an application to A.P.Wakf Tribunal under Section 83(2) of the Wakf Act, 1995.

The learned Standing Counsel for A.P.Wakf Board, Sri K.Ramakantha Reddy, submits that during the survey conducted by the Commissioner of Wakfs, the property in S.Nos.79, 91, 92, 25, 81, 74, 90, 711, 752, 753 and 713 were notified as wakf property. According to the learned counsel, the petitioner herein interpolated S.No.79 in the original survey report as 29 so as to get undeserved benefit. The learned counsel also placed strong reliance on Section 83(2) of the Act and the two Division Bench judgments of this Court in **Syed Muneer v. Chief Executive Officer, A.P.State Wakf Board, Hyderabad** and **A.P. Wakf Board v. Syed Jalaluddin Shan** in support of the contention that the question cannot be gone into in this Writ Petition. He also produced original register containing the report of the Surveyor of Wakfs under 1954 Act. He relies on entries made in page Nos.286-287 in support of the submission that all the lands in different survey numbers, including S.No.79, belong to Quazzath Inam Bodhan.

Section 83(2) of the Act gives an effective alternative remedy to any person, any person interested, or Muthawalli to file an application before the Wakf Tribunal if such person is aggrieved by any order made under the Act or the Rules made thereunder. Against any decision also, such an application can be filed. The question raised in this Writ Petition is whether the land included in the notification published under Section 4(3) of the old Act is land comprised in S.No.79 or S.No.29. This can be gone into with reference to the evidence available on record which has to be produced by both the parties. Therefore, it would be proper to give liberty to the petitioner to approach the Wakf Tribunal and file an application under Section 83(2)

of the Wakf Act, 195. In this Writ Petition, no relief can be granted as prayed.

The Writ Petition with the above observations is accordingly disposed of.

(V.V.S.RAO, J)

23.12.2005

bnr

Note:Issue CC by 26.12.2005.

(B.O)

bnr